

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1400**  
**96TH GENERAL ASSEMBLY**

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Reported from the Committee on Financial and Governmental Organizations and Elections, April 26, 2012, with recommendation that the Senate Committee Substitute do pass.

4238S.05C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 67.085, 361.070, 361.080, 400.9-311, 408.052, and 443.812, RSMo, and to enact in lieu thereof six new sections relating to financial transactions, with existing penalty provisions and an emergency clause.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 67.085, 361.070, 361.080, 400.9-311, 408.052, and  
2 443.812, RSMo, are repealed and six new sections enacted in lieu thereof, to be  
3 known as sections 67.085, 361.070, 361.080, 400.9-311, 408.052, and 443.812, to  
4 read as follows:

67.085. Notwithstanding any law to the contrary, any political subdivision  
2 of the state and any other public entity in Missouri may invest funds of the public  
3 entity not immediately needed for the purpose to which such funds or any of them  
4 may be applicable provided each public entity meets the requirements for  
5 separate deposit insurance of public funds permitted by federal deposit insurance  
6 and in accordance with the following conditions:

7 (1) The public funds are invested through a financial institution which  
8 has been selected as a depository of the funds in accordance with the applicable  
9 provisions of the statutes of Missouri relating to the selection of depositories and  
10 such financial institution enters into a written agreement with the public entity;

11 (2) The selected financial institution arranges for the deposit of the public  
12 funds in [certificates of] deposit **accounts** in one or more financial institutions  
13 wherever located in the United States, for the account of the public entity;

14 (3) Each such [certificate of] deposit [issued by financial institutions as

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 provided in subdivision (2) of this section] **account** is insured by federal deposit  
16 insurance for one hundred percent of the principal and accrued interest of the  
17 [certificate of] deposit;

18 (4) The selected financial institution acts as custodian for the public  
19 entity with respect to [the certificate of] **such** deposit [issued for its account]  
20 **accounts**; and

21 (5) [At the same time] **On the same date** that the public funds are  
22 deposited [and the certificates of deposit are issued] **under subdivision (2) of**  
23 **this section**, the selected financial institution receives an amount of deposits  
24 from customers of other financial institutions equal to the amount of the public  
25 funds initially invested by the public entity through the selected financial  
26 institution.

361.070. 1. The director of finance and all employees of the division of  
2 finance, which term shall, for purposes of this section and section 361.080,  
3 include special agents, shall, before entering upon the discharge of their duties,  
4 take the oath of office prescribed by the constitution, and, in addition, take an  
5 oath that they will not reveal the conditions or affairs of any financial institution  
6 or any facts pertaining to the same, that may come to their knowledge by virtue  
7 of their official positions, unless required by law to do so in the discharge of the  
8 duties of their offices or when testifying in any court proceeding. For purposes  
9 of this section and section 361.080, "financial institution" shall mean any entity  
10 subject to chartering, licensing, or regulation by the division of finance.

11 2. The director of finance and all employees of the division of finance shall  
12 further execute to the state of Missouri good and sufficient bonds with corporate  
13 surety, to be approved by the governor and attorney general, conditioned that  
14 they will faithfully and impartially discharge the duties of their offices, and pay  
15 over to the persons entitled by law to receive it, all money coming into their  
16 hands by virtue of their offices. The principal amount of bond applicable to each  
17 employee shall be determined by the state banking and savings and loan  
18 board. The bond, after approval by the governor and attorney general, shall be  
19 filed with the secretary of state for safekeeping. The bond premiums, not to  
20 exceed one percent on the amount thereof, shall be paid out of the state treasury  
21 in the same manner as other expenses of the division.

22 3. Neither the director of finance nor any employees of the division of  
23 finance who participate in the examination of any bank or trust company, or who  
24 may be called upon to make any official decision or determination affecting the

25 operation of any bank or trust company, other than the members of the state  
26 banking and savings and loan board who are required to have experience  
27 managing a bank or association as defined in chapter 369, shall be an officer,  
28 director, attorney, owner, or holder of stock in any bank or trust company or any  
29 bank holding company as that term is defined in section 362.910, nor shall they  
30 receive, directly or indirectly, any payment or gratuity from any such  
31 organization, nor engage in the negotiation of loans for others with any state  
32 bank or trust company, nor be indebted to any state bank or trust company.

33       **4. The director of the division of finance shall establish an**  
34 **internal policy to ensure the professional conduct of employees of the**  
35 **division of finance who participate in the examination of any person or**  
36 **entity under the jurisdiction of the director of the division of finance,**  
37 **or who may be called upon to make any official decision or**  
38 **determination affecting the operation of any person or entity under the**  
39 **jurisdiction of the director of the division of finance. The policy shall**  
40 **address such matters deemed appropriate by the director of the**  
41 **division of finance, including, but not limited to, procedures to address**  
42 **and mitigate the conflict of interest presented by offers of employment**  
43 **or negotiations regarding employment between an employee of the**  
44 **division and any person or entity under the jurisdiction of the director**  
45 **of the division of finance.**

46       **5. The director of finance, in connection with any examination or**  
47 **investigation of any person, company, or event, shall have the authority to compel**  
48 **the production of documents, in whatever form they may exist, and shall have the**  
49 **authority to compel the attendance of and administer oaths to any person having**  
50 **knowledge of any issue involved with the examination or investigation. The**  
51 **director may seek judicial enforcement of an administrative subpoena by**  
52 **application to the appropriate court. An administrative subpoena shall be subject**  
53 **to the same defenses or subject to a protective order or conditions as provided and**  
54 **deemed appropriate by the court in accordance with the Missouri Supreme Court**  
55 **Rules.**

361.080. 1. To ensure the integrity of the examination process, the  
2 director of finance and all employees of the division of finance shall be bound  
3 under oath to keep secret all facts and information obtained in the course of all  
4 examinations and investigations [except] **subject only to the exceptions set**  
5 **out below. When disclosure is necessary or required under this**

6 subsection, the director may set conditions and limitations including  
7 an agreement of confidentiality or seek a judicial protective order  
8 under subsection 2 of this section. The exceptions allowing disclosure  
9 are as follows:

10 (1) To the extent that the public duty of the director requires the director  
11 to report information to another government official or agency or take  
12 administrative or judicial enforcement action regarding the affairs of a financial  
13 institution;

14 (2) When called as a witness in a court proceeding relating to such  
15 financial institution's safety and soundness or in any criminal proceeding;

16 (3) When reporting on the condition of the financial institution to the  
17 officers and directors of the financial institution or to a holding company which  
18 owns the financial institution;

19 (4) When reporting findings to a complainant, provided the disclosure is  
20 limited to such complainant's account information;

21 (5) When exchanging information with any agency which regulates  
22 financial institutions under federal law or the laws of any state when the director  
23 of finance determines that the sharing of information is necessary for the proper  
24 performance by the director of finance and the other agencies, that such  
25 information will remain confidential as though subject to section 361.070 and this  
26 section and that said agencies routinely share information with the division of  
27 finance;

28 (6) When authorized by the financial institution's board of directors to  
29 provide the information to anyone else; or

30 (7) [When disclosure is necessary or required, the director may set  
31 conditions and limitations, including an agreement of confidentiality or a judicial  
32 or administrative protective order.] **When undergoing a state audit,**  
33 **provided that the director of finance has entered an agreement of**  
34 **confidentiality with the state auditor. The agreement of confidentiality**  
35 **shall include provisions for the redaction of records to remove**  
36 **protected information from disclosure. The redaction of information**  
37 **shall be required when it is comprised of nonpublic personal or**  
38 **proprietary commercial and financial information, trade secrets,**  
39 **information the disclosure of which could prejudice the effective**  
40 **performance or security of the division of finance including component**  
41 **CAMELS ratings or other sensitive findings, or information that is**

42 **protected under any recognized privilege, such as attorney client**  
43 **privilege or work product. Protected information shall also be**  
44 **identifying bank information including anything that could be matched**  
45 **with public information to discern the identity of a financial institution**  
46 **under the jurisdiction of the division of finance or of individual**  
47 **persons or business entities served by such financial institutions. When**  
48 **confidential or protected information relating to a particular financial**  
49 **institution under the division's jurisdiction is requested, the director**  
50 **of the division of finance shall provide notice to that institution at least**  
51 **thirty days prior to production, and shall provide the institution a copy**  
52 **of the proposed agreement of confidentiality. The affected institution**  
53 **may submit comments to the director regarding the agreement or the**  
54 **production and may seek review of the decision to produce the**  
55 **information or of the confidentiality agreement, or both, under the**  
56 **provisions of section 536.150. The director of the division of finance**  
57 **may forego the notice to a financial institution under this subsection**  
58 **when the notice would compromise an investigation by any agency with**  
59 **criminal prosecutorial powers.**

60       2. In all other circumstances, facts and information obtained by the  
61 director of finance and the employees of the division of finance through  
62 examinations or investigations shall be held in confidence absent a court's finding  
63 of compelling reasons for disclosure. Such finding shall demonstrate that the  
64 need for the information sought outweighs the public interest in free and open  
65 communications during the examination or investigation process. To assure a  
66 meaningful hearing, any financial institution that is not already a party to the  
67 judicial proceeding and whose information is the subject of a records request or  
68 subpoena shall be joined or notified and permitted to intervene in the hearing  
69 and to participate regarding the production request or subpoena. In no event  
70 shall a financial institution, or any officer, director, or employee thereof, be  
71 charged with libel, slander, or defamation for any good faith communications with  
72 the director of finance or any employees of the division of finance.

73       3. If the director or any employees of the division of finance disclose the  
74 name of any debtor of any financial institution or disclose any facts obtained in  
75 the course of any examination or investigation of any financial institution, except  
76 as herein provided, the disclosing party shall be deemed guilty of a misdemeanor  
77 and upon conviction shall be subject to forfeiture of office and the payment of a

78 fine not to exceed one thousand dollars.

400.9-311. (a) Except as otherwise provided in subsection (d), the filing  
2 of a financing statement is not necessary or effective to perfect a security interest  
3 in property subject to:

4 (1) A statute, regulation, or treaty of the United States whose  
5 requirements for a security interest's obtaining priority over the rights of a lien  
6 creditor with respect to the property preempt section 400.9-310(a);

7 (2) Sections 301.600 to 301.661, section 700.350, and section 400.2A-304;  
8 or

9 (3) A certificate-of-title statute of another jurisdiction which provides for  
10 a security interest to be indicated on the certificate as a condition or result of the  
11 security interest's obtaining priority over the rights of a lien creditor with respect  
12 to the property.

13 (b) Compliance with the requirements of a statute, regulation, or treaty  
14 described in subsection (a) for obtaining priority over the rights of a lien creditor  
15 is equivalent to the filing of a financing statement under this article. Except as  
16 otherwise provided in subsection (d) and sections 400.9-313 and 400.9-316(d) and  
17 (e) for goods covered by a certificate of title, a security interest in property subject  
18 to a statute, regulation, or treaty described in subsection (a) may be perfected  
19 only by compliance with those requirements, and a security interest so perfected  
20 remains perfected notwithstanding a change in the use or transfer of possession  
21 of the collateral.

22 (c) Except as otherwise provided in subsection (d) and section 400.9-316(d)  
23 and (e), duration and renewal of perfection of a security interest perfected by  
24 compliance with the requirements prescribed by a statute, regulation, or treaty  
25 described in subsection (a) are governed by the statute, regulation, or treaty. In  
26 other respects, the security interest is subject to this article.

27 (d) During any period in which collateral is inventory held for sale or  
28 lease by a person or leased by that person as lessor and that person is in the  
29 business of selling [or leasing] goods of that kind, this section does not apply to  
30 a security interest in that collateral created by that person [as debtor].

408.052. 1. No lender shall charge, require or receive, on any residential  
2 real estate loan, any points or other fees of any nature whatsoever, excepting  
3 insurance, including insurance for involuntary unemployment coverage, and a  
4 one-percent origination fee, whether from the buyer or the seller or any other  
5 person, except that the lender may charge bona fide expenses paid by the lender

6 to any other person or entity except to an officer, employee, or director of the  
7 lender or to any business in which any officer, employee or director of the lender  
8 owns any substantial interest for services actually performed in connection with  
9 a loan. In addition to the foregoing, if the loan is for the construction, repair, or  
10 improvement of residential real estate, the lender may charge a fee not to exceed  
11 one percent of the loan amount for inspection and disbursement of the proceeds  
12 of the loan to third parties. Notwithstanding the foregoing, the parties may  
13 contract for a default charge for any installment not paid in full within fifteen  
14 days of its scheduled due date. The restrictions of this section shall not apply:

15 (1) To any loan which is insured or covered by guarantee made by any  
16 department, board, bureau, commission, agency or establishment of the United  
17 States, pursuant to the authority of any act of Congress heretofore or hereafter  
18 adopted; and

19 (2) To any loan for which an offer or commitment or agreement to  
20 purchase has been received from and which is made with the intention of  
21 reselling such loan to the Federal Housing Administration, Farmers Home  
22 Administration, Federal National Mortgage Association, Government National  
23 Mortgage Association, Federal Home Loan Mortgage Corporation, or to any  
24 successor to the above-mentioned organizations, to any other state or federal  
25 governmental or quasi-governmental organization; [and]

26 (3) **To any mortgage broker making loans on manufactured or**  
27 **modular homes; and**

28 (4) Provided that the 1994 reenactment of this section shall not be  
29 construed to be action taken in accordance with Public Law 96-221, Section  
30 501(b)(4). Any points or fees received in excess of those permitted under this  
31 section shall be returned to the person from whom received upon demand.

32 2. Notwithstanding the language in subsection 1 of this section, a lender  
33 may pay to an officer, employee or director of the lender, or to any business in  
34 which such person has an interest, bona fide fees for services actually and  
35 necessarily performed in good faith in connection with a residential real estate  
36 loan, provided:

37 (1) Such services are individually listed by amount and payee on the  
38 loan-closing documents; and

39 (2) Such lender may use the preemption of Public Law 96-221, Section 501  
40 with respect to the residential real estate loan in question. When fees charged  
41 need not be disclosed in the annual percentage rate required by Title 15, U.S.C.

42 Sections 1601, et seq., and regulations thereunder because such fees are de  
43 minimis amounts or for other reasons, such fees need not be included in the  
44 annual percentage rate for state examination purposes.

45 3. The lender may charge and collect bona fide fees for services actually  
46 and necessarily performed in good faith in connection with a residential real  
47 estate loan as provided in subsection 2 of this section; however, the lender's board  
48 of directors shall determine whether such bona fide fees shall be paid to the  
49 lender or businesses related to the lender in subsection 2 of this section, but may  
50 allow current contractual relationships to continue for up to two years.

51 4. If any points or fees are charged, required or received, which are in  
52 excess of those permitted by this section, or which are not returned upon demand  
53 when required by this section, then the person paying the same points or fees or  
54 his or her legal representative may recover twice the amount paid together with  
55 costs of the suit and reasonable attorney's fees, provided that the action is  
56 brought within five years of such payment.

57 5. Any lender who knowingly violates the provisions of this section is  
58 guilty of a class B misdemeanor.

443.812. 1. Only one license shall be issued to each person conducting the  
2 activities of a residential mortgage **loan** broker. A residential mortgage broker  
3 shall register with the director each office, place of business or location in  
4 Missouri where the residential mortgage loan broker conducts any part of the  
5 residential mortgage loan broker's business pursuant to section 443.839.

6 2. Residential mortgage loan brokers may only solicit, broker, fund,  
7 originate, serve and purchase residential mortgage loans in conformance with  
8 sections 443.701 to 443.893 and such rules as may be promulgated by the  
9 director.

10 3. No residential mortgage loan broker shall permit an unlicensed  
11 individual to engage in the activities of a mortgage loan originator and no  
12 residential mortgage loan broker shall permit a mortgage loan originator to  
13 engage in the activities of a mortgage loan originator under the supervision of the  
14 residential mortgage loan broker until that mortgage loan originator is shown to  
15 be employed by the residential mortgage loan broker as provided in this section.

16 4. Each residential mortgage loan broker shall report and file a listing  
17 with the director showing each mortgage loan originator licensed in Missouri and  
18 employed under the supervision of the residential mortgage loan broker. The  
19 listing shall show the name and unique identifier of each mortgage loan



20 originator. The listing shall be updated with changes and filed no later than the  
21 next business day. The director may authorize a system of reporting that shows  
22 mortgage loan originators employed by Missouri residential mortgage loan  
23 brokers via the NMLSR in substitution for the report and filing requirement  
24 under this subsection.

25         5. The director may grant waivers of residential mortgage loan broker  
26 licensing requirements for persons engaged primarily in servicing residential  
27 mortgage loans where such waiver shall benefit borrowers including in particular  
28 the requirement to maintain a full-service office in Missouri.

29         **6. (1) Notwithstanding any other laws to the contrary, the**  
30 **provisions of this subsection shall only apply to residential mortgage**  
31 **loan brokers engaged primarily in the business of brokering, funding,**  
32 **or purchasing loans that are secured by a manufactured home or**  
33 **modular unit as those terms are defined under chapter 700. For the**  
34 **purposes of this subsection, the term "engaged primarily" shall be**  
35 **defined as a residential mortgage loan broker that derives seventy-five**  
36 **percent or more of its gross income in Missouri from the brokering,**  
37 **funding, or purchasing of loans that are secured by a manufactured**  
38 **home or modular unit as those terms are defined under chapter 700.**

39         **(2) No residential mortgage loan broker licensed in this state**  
40 **shall be required to maintain a full-service office in Missouri; except**  
41 **that, nothing in this subsection shall be construed as relieving such**  
42 **broker of the requirements to be licensed in this state and obtain a**  
43 **certificate of authority from the secretary of state's office to transact**  
44 **business in this state.**

45         **(3) Any residential mortgage loan broker licensed in this state**  
46 **who does not maintain a full-service office in Missouri shall file with**  
47 **the license application an irrevocable consent in a form to be**  
48 **determined by the director, duly acknowledged, which provides that for**  
49 **any suits and actions commenced against the broker in the courts of**  
50 **this state and, if necessary for any actions brought against the broker,**  
51 **the venue shall lie in Missouri.**

52         **(4) The director may assess the reasonable costs of any**  
53 **investigation incurred by the division which are outside the normal**  
54 **expense of any annual or special examination or any other costs**  
55 **incurred by the division as a result of a licensed residential mortgage**  
56 **loan broker not maintaining a full-service office in Missouri.**

Section B. In order to promote financial transactions and protect  
2 confidentiality in auditing such transactions, section A of this act is deemed  
3 necessary for the immediate preservation of the public health, welfare, peace and  
4 safety, and is hereby declared to be an emergency act within the meaning of the  
5 constitution, and section A of this act shall be in full force and effect upon its  
6 passage and approval.

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Unofficial

Bill

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